



RE: Call or Meeting on Monday
Mia Bearley to: Polly Jessen
Bcc: Kathryn Hernandez, Maureen O'Reilly, John Dalton

1169949 - R8 SDMS

08/30/2010 01:31 PM

It's a pleasure working with you, Polly. Thanks for putting such hard work into trying to make this a win win for all involved. I haven't sensed much budging on this side re being able to shift our focus away from an order encompassing all the elements we discussed during our visit, but I will get back to you just as soon as possible. I just wanted you to know that both Matt and I received this and we'll will get back to you as soon as possible.

"Polly Jessen"	Mia, We took the liberty of adapting an existing si...	08/30/2010 12:02:06 PM
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From: "Polly Jessen" <pjessen@kaplankirsch.com>
To: Mia Bearley/R8/USEPA/US@EPA
Cc: Matthew Cohn/R8/USEPA/US@EPA, "Tom Daley" <tdaley@parkcity.org>, "Jason Christensen" <jason.christensen@parkcity.org>, "Diane Foster" <Diane.Foster@parkcity.org>, "Lori Potter" <lpotter@kaplankirsch.com>, "Brooke McKinley" <bmckinley@kaplankirsch.com>
Date: 08/30/2010 12:02 PM
Subject: RE: Call or Meeting on Monday

Mia,

We took the liberty of adapting an existing site agreement to incorporate the proposal I sent on Friday. Our hope is that we can move very quickly from the attached initial draft if this approach to guaranteeing repository capacity can meet both EPA and Park City objectives.

With respect to a follow up call or meeting this week, I will need to get back to you by separate message. I hope to have that information by 1 or 1:30 p.m.

Thank you for your call this morning.

Polly B. Jessen
Kaplan Kirsch & Rockwell LLP
1675 Broadway, Suite 2300
Denver, CO 80202
(303) 825-7000
www.kaplankirsch.com

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-----Original Message-----

From: Bearley.Mia@epamail.epa.gov [mailto: Bearley.Mia@epamail.epa.gov]
Sent: Monday, August 30, 2010 11:11 AM
To: Polly Jessen
Subject: RE: Call or Meeting on Monday

Hi Polly. Yes, time is so very valuable - I'm going to call you here in a sec
...

From: "Polly Jessen" <pjessen@kaplankirsch.com>
To: Mia Bearley/R8/USEPA/US@EPA
Cc: "Lori Potter" <lpotter@kaplankirsch.com>, "Jason Christensen" <jason.christensen@parkcity.org>
Date: 08/30/2010 09:47 AM
Subject: RE: Call or Meeting on Monday

Mia,

I am working on a specific block of time that Park City is available, but anticipate a block from 1:00 to 3:30 today. Hopefully, you and Kathy (and Matt, if possible) would be available sometime in that block. During that time, we would like to focus on this interim approach, but also think it would make sense to scope out an agenda for a technical meeting later in the week so that we can get started on the larger agreement.

Polly

-----Original Message-----

From: Bearley.Mia@epamail.epa.gov [mailto: Bearley.Mia@epamail.epa.gov]
Sent: Monday, August 30, 2010 7:46 AM
To: Polly Jessen
Subject: Re: Call or Meeting on Monday

Good morning! Thanks for trying to work out times to meet so quickly. I fwd'd your request to Matt last week, but of course both he and I were out. Kathy is also out today, but indicated that she would be available, if necessary. My sense is that if we chat, seniors here would prefer if it would be in the context of the larger order ... but we need to get back to you about Park City's 8/27/10 proposal anyway so I'll let you know as soon as I've heard back from Matt. Talk to you soon and thanks again for all your help.

From: "Polly Jessen" <pjessen@kaplankirsch.com>
To: Mia Bearley/R8/USEPA/US@EPA
Date: 08/26/2010 11:47 AM
Subject: Call or Meeting on Monday

Mia,

We would like to try again to craft an acceptable proposal for interim capacity based on the feedback you gave me yesterday. Would you and, if appropriate, Matt Cohn, be available to meet or join a call with us on Monday? (I understand based on our conversation yesterday that you are out today and tomorrow.) Before then, we plan to provide more detail, but I wanted to try to reserve some time because I know it goes fast. :)
Thank you!

Polly B. Jessen
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www.kaplankirsch.com

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Interim Agreement re use of Richardson Flats Repository.pdf

[Determine appropriate title and header for agreement]

**Interim Agreement between the Environmental Protection Agency and Park City
Municipal Corporation Addressing Use of the Richardson Flat Tailings Site
Repository for Disposal of Development Waste**

I. INTRODUCTION

1. This Agreement ("Agreement") is made and entered into by and between the United States on behalf of the Environmental Protection Agency ("EPA") and Park City Municipal Corporation (collectively the "Parties").
2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, *et seq.* and the authority of the Attorney General of the United States to compromise and settle claims of the United States.
3. Park City Municipal Corporation ("PCMC") is a municipal corporation organized under the laws of the state of Utah.
4. The Parties agree to undertake all actions required by the terms and conditions of this Agreement.
5. The Parties agree that PCMC's entry into this Agreement, and the actions undertaken by PCMC in accordance with the Agreement, do not constitute an admission of any liability by PCMC.
6. The resolution of the matters addressed in this Agreement is in the public interest.

II. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have

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the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

- a) "Agreement" shall mean this Agreement and all appendices hereto.

In the event of conflict between this Agreement and any appendix, this Agreement shall control.

- b) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

- c) "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

- d) "Development Waste" shall mean currently unexposed Waste Material that may be exposed during future development activities on property owned or designated by PCMC.

- e) "Effective Date" shall mean the effective date of this Agreement as provided in Section XIV.

- f) "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

- g) "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.

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§ 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h) “OU2” shall mean Operable Unit 2 of the Richardson Flat Tailings Site.

i) “OU3” shall mean a new Operable Unit 3 proposed for the Richardson Flat Tailings Site, which would include cleanup of approximately 276 acres in the northern portion of lower Silver Creek, the middle reach of Silver Creek, and the Silver Maple Claims Site as well as construction of a new mine waste repository.

j) “Paragraph” shall mean a portion of this Agreement identified by an Arabic numeral.

k) “Parties” shall mean the United States on behalf of EPA and PCMC.

l) “PCMC” shall mean Park City Municipal Corporation.

m) “Richardson Flat Tailings Site” shall mean the Richardson Flat Tailings Site, CERCLIS ID # UTD980952840, which is located approximately 1.5 miles northeast of Park City, Utah and includes property owned by UPCM and PCMC, among others. The Richardson Flat Tailings Site is the location of a mine tailings impoundment that covers approximately 160 acres in the northwest corner of UPCM’s property and includes diversion ditches, wetlands and other features. A Remedial Investigation/Feasibility Study of OU2 of the Richardson

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Flat Tailings Site is underway as of the date of this Agreement and EPA has begun negotiation of a multi-party agreement for a response action in the proposed OU3. The Richardson Flat Tailings Site has been used as a repository for mining wastes from the Silver Creek Watershed.

n) "Section" shall mean a portion of this Agreement identified by a capitalized Roman numeral.

o) "Settlement" shall mean a multi-party agreement to conduct a non-time critical removal action in the proposed OU3, among EPA, PCMC, the United States Bureau of Land Management ("BLM"), the Utah Department of Environmental Quality ("UDEQ"), and UPCM, or some combination thereof.

p) "Site Waste" shall mean Waste Material currently exposed within the Silver Creek Watershed.

q) "Soils Ordinance" shall mean PCMC's Landscaping and Maintenance of Soil Cover Ordinance, Park City Municipal Code, Title 11, Chapter 15.

r) "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

s) "UPCM" means United Park City Mines Company.

t) "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33), and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

III. STATEMENT OF FACTS

8. PCMC owns property within the Silver Creek Watershed, which is located in Park City, Summit County, Utah.

9. In cooperation with EPA and the Utah Department of Environmental Quality, PCMC developed and implemented the Soils Ordinance to contain and dispose of soils impacted with mine tailings within Park City.

10. The Soils Ordinance requires covering soils exceeding established lead levels which are left in place with six inches of approved topsoil and acceptable cover or disposing such soil at a permitted facility.

11. Development of PCMC-owned property has resulted in Development Waste within the Soils Ordinance boundary.

12. Pursuant to the Soils Ordinance, such contaminated soils must be properly disposed of at designated facility. Until May 11, 2010, PCMC disposed of mine-impacted soils at the repository at Richardson Flat Tailings Site, which is owned by UPMC and within the Silver Creek watershed.

13. On May 11, 2010, EPA directed UPCM to stop accepting Development Waste from PCMC to preserve capacity for anticipated Site Waste originating from OU2 and proposed OU3.

14. PCMC is currently undertaking a number of development projects within Park City which are generating Development Waste.

15. Because EPA has declined to further authorize PCMC to use the Richardson Flat Tailings Site repository, PCMC has been required to ship Development

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Waste to a facility in Tooele, Utah. The shipping and disposal of Development Waste in Tooele is estimated to cost \$20,000 per day.

16. At present, the Settlement is under negotiation.

17. PCMC has expressed its interest in negotiating an agreement with EPA pursuant to which it would be permitted to utilize capacity at the Richardson Flat Tailings Site repository until Settlement is reached.

18. Until a Settlement regarding a new mine waste repository within OU3 can be reached, EPA and PCMC have determined that additional capacity at the Richardson Flat Tailings Site repository will be made available to PCMC under the terms and conditions set forth in Section IV below.

19. The Parties intend that this Agreement will preserve capacity for mine waste from OU2 and OU3 while avoiding unnecessary costs to PCMC of shipping waste to Tooele.

IV. AGREEMENT

20. In consideration of and in exchange for the EPA's authorization for PCMC to dispose of 10,000 cubic yards of Development Waste at the Richardson Flat Tailings Site repository commencing immediately upon the Effective Date of this Agreement, PCMC agrees to comply with all provisions of this Agreement.

V. PAYMENT

21. In consideration of and in exchange for EPA's authorization for PCMC to dispose of 10,000 cubic yards of Development Waste at the Richardson Flat Tailings Site repository immediately upon the Effective Date of this Agreement, PCMC agrees as follows:

a) to negotiate in good faith to reach Settlement with EPA regarding cost sharing and response action obligations within the proposed OU3, including construction of a new onsite repository to supplement capacity at the Richardson Flat Tailings Site;

b) to pay the actual per/cubic yard cost of off-site or on-site disposal of a quantity of waste equal to the quantity of material that PCMC disposes of at the Richardson Flat Tailings Site, in the event that:

i) Park City has not reached Settlement with EPA;

ii) the Richardson Flat Tailings Site repository has reached capacity; and

iii) Site Waste remains in OU2 or OU3 of the Richardson Flat Tailings Site that has been designed for disposal at the Richardson Flat Tailings Site repository or another on-site repository under the selected remedy for OU2 or OU3.

c) Park City shall place \$1,000,000 into an interest bearing escrow account to secure its obligations under this Agreement. Interest will accrue and be maintained in the escrow account.

d) When Settlement is reached, the \$1,000,000 and interest in escrow will be the first funds applied toward PCMC's share of such Settlement obligations. PCMC shall not be required to contribute additional funds or expend

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additional amounts until after the \$1,000,000 has been fully applied to PCMC's share of such Settlement obligations. Any escrowed fund in excess of PCMC's Settlement obligations shall be released to PCMC immediately upon such Settlement.

22. If Settlement is not reached, any escrowed funds remaining after payment of disposal costs under Paragraph 21 above will be first applied to satisfy any judgment for cost recovery in OU3 that may be awarded against PCMC to EPA. Any remainder after payment of the foregoing costs, or expiration of the statute of limitations for any such cost recovery action by EPA, shall be returned to PCMC.

23. At the time the funds are placed in escrow, PCMC shall send notice of the same to EPA in accordance with Section XIII (Notices and Submissions).

24. PCMC shall make all payments required by this Section by FedWire Electronic Funds Transfer ("EFT") to the _____ account in accordance with current EFT procedures, referencing EPA Site/Spill Number ____.

25. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue Interest.

VI. DISPUTE RESOLUTION

26. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and PCMC arising under or with respect to PCMC's obligations under this Agreement. However, the procedures set forth in this Section shall not apply to actions that have not been disputed in accordance with this Section.

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27. Any dispute which arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is extended by written agreement of the Parties. The dispute shall be considered to have arisen when either party submits to the other a written Notice of Dispute. Any agreement relating to a Notice of Dispute which is reached as a result of informal negotiations shall be in writing signed by EPA and PCMC.

28. In the event that the Parties cannot resolve a dispute by informal negotiations, EPA shall provide PCMC a written decision on the dispute. Thereafter, EPA may pursue whatever remedies it may have under law, including the right to seek judicial enforcement of this Agreement.

29. The existence of a dispute, as defined in this Section, and EPA's consideration of matters placed into dispute shall not excuse, toll or suspend any other compliance obligation or deadline required pursuant to this Agreement during the pendency of the dispute resolution process.

30. Notwithstanding any other provision of this Agreement, any action or decision by EPA pursuant to this Agreement shall not constitute final agency action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel PCMC's compliance with this Agreement.

VII. FINANCIAL ASSURANCE

31. PCMC has selected, and EPA has approved, as a Financial Assurance mechanism an escrow account pursuant to Section V. PCMC shall submit all executed and/or otherwise finalized instruments and other documents required to make the selected

Financial Assurance mechanism legally binding, in a form substantially identical to the documents attached hereto as Appendix ____, to EPA Financial Analyst [insert name], with a copy to EPA in accordance with Section XIII (Notices and Submissions).

32. If PCMC desires to change the form or terms of any Financial Assurance mechanism(s), or cancel or discontinue any Financial Assurance mechanism(s), PCMC shall make this request to EPA in writing and EPA shall either approve or disapprove the request in writing.

VIII. RESERVATION OF RIGHTS BY UNITED STATES

33. The United States reserves, and this Agreement is without prejudice to, all rights against PCMC with respect to all other matters, including but not limited to, the following:

- a) claims based on a failure by PCMC to meet a requirement of this Agreement;
- b) any liability of PCMC resulting from past or future releases or threatened of hazardous substances, or pollutants or contaminants;
- c) any criminal liability;
- d) any liability of PCMC for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and
- e) any liability of PCMC for violations of local, State or federal law or regulations.

34. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or

future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

35. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the PCMC to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law.

IX. RESERVATION OF RIGHTS BY PARK CITY MUNICIPAL CORPORATION

36. PCMC reserves, and this Agreement is without prejudice to, all rights and defenses otherwise available to PCMC with respect to all other matters, including but not limited to, the following:

- a) claims based on a failure by EPA to meet a requirement of this Agreement or the NCP;
- b) any liability of PCMC resulting from past or future releases or threatened of hazardous substances, or pollutants or contaminants;
- c) any criminal liability;
- d) any liability of PCMC for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and
- e) any liability of PCMC for violations of local, State or federal law or regulations.

37. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or

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future, in law or in equity, which PCMC may have against any person, firm, corporation or other entity not a party to this Agreement.

38. Nothing in this Agreement is intended to limit the right of PCMC to seek to compel parties other than the PCMC to perform or pay for response actions at the Site.

X. DOCUMENT RETENTION

39. PCMC agrees to retain and make available to EPA all business and operating records, contracts, site studies and investigations, and documents relating to the disposal of PCMC Development Waste at the Richardson Flat Tailings Site repository pursuant to this Agreement, for at least ten years, following the Effective Date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, PCMC shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at EPA's expense.

XI. PAYMENT OF COSTS

40. If PCMC fails to comply with the terms of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XII. PROJECT COORDINATORS

41. The EPA's Project Coordinator for this Property is:

Kathryn Hernandez
U.S. Environmental Protection Agency, Region 8
999 Eighteenth Street, Suite 300 (8EPR-SR)
Denver, CO 80202-2466

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42. PCMC's Project Coordinator for this Property is:

Diane Foster
Park City Municipal Corporation
445 Marsac Avenue
P.O. Box 1480
Park City, UT 84060

43. EPA may designate other representatives, including, but not limited to, EPA employees and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Agreement.

44. PCMC's legal counsel shall not serve as its Project Coordinator. Instead, PCMC's Project Coordinator shall be PCMC's then-current Environmental Sustainability Manager or a PCMC employee with similar responsibilities on behalf of PCMC.

45. PCMC shall notify EPA in writing ten (10) days prior to any change of its Project Coordinator.

XIII. NOTICES AND SUBMISSIONS

46. Whenever under the terms of this Agreement written notice is required to be given by one Party to another, it shall be directed to the individuals or office at the addresses specified below, unless those individuals or their successors give written notice of a change to the other Party. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and PCMC respectively.

As to EPA:

Kathryn Hernandez
EPA Project Coordinator
U.S. Environmental Protection Agency, Region 8
999 Eighteenth Street, Suite 300 (8EPR-SR)

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Denver, CO 80202-2466

And

Mia Bearley
Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
999 Eighteenth Street, Suite 300 (8-ENFL)
Denver, CO 80202-2466

As to PCMC:

Diane Foster
Park City Municipal Corporation
445 Marsac Avenue
P.O. Box 1480
Park City, UT 84060

XIV. EFFECTIVE DATE

47. The effective date of this Agreement shall be the date upon which EPA issues written notice to PCMC that EPA has fully executed the Agreement.

XV. COUNTERPART ORIGINALS

48. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Insert signature blocks]